

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of the Local)
Competition Provisions in the)
Telecommunications Act of 1996)

CC Docket No. 96-98

**OPPOSITION OF SPRINT SPECTRUM L.P.
TO PETITIONS FOR RECONSIDERATION**

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Sprint Spectrum L.P. ("Sprint Spectrum")¹ believes the Commission correctly and faithfully implemented the local competition provisions of the Telecommunications Act of 1996 (the "Act") in its *First Report* in this proceeding. We file these comments (1) to support the Commission's decision that local calling areas for commercial mobile radio service ("CMRS") providers be consistent with major trading area ("MTA") boundaries and thus that access charges not be imposed upon CMRS providers² and (2) to oppose efforts by incumbent local exchange carriers ("LECs") to carve out a new right to discriminate in pricing among new competitors on the basis of technology.

¹ Sprint Spectrum L.P. ("Sprint Spectrum") is a joint venture formed by subsidiaries of Sprint Corporation, Tele-Communications, Inc., Comcast Corporation, and Cox Communications, Inc. that is licensed to provide personal communications services ("PCS") to more Americans than any other entity.

² Sprint Spectrum filed a comment October 25, 1996 in *Iowa Utilities Bd. v. Federal Communications Comm'n*, No. 96-3321 (8th Cir.), with Cox Communications, Inc., asserting that MTA-wide local calling areas and several other rules adopted in the *First Report* concerning CMRS should not be subject to the Eighth Circuit's stay order.

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I. CMRS LOCAL CALLING AREAS SHOULD BE CONSISTENT WITH MAJOR TRADING AREAS, AND ACCESS CHARGES SHOULD NOT BE IMPOSED UPON CMRS PROVIDERS.

Section 51.701(b) defines "local telecommunications traffic" as "traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area." The Local Exchange Carrier Coalition has petitioned the Commission to abandon this well-reasoned approach in favor of utilizing existing local calling areas established by the states.³ We urge the Commission to reject this request.

As defined by the Commission, MTAs are "CMRS providers' license areas [that] are established under federal rules, and [that] in many cases are larger than the local exchange service areas that state commissions have established for incumbent LECs' local service areas." *First Report* at ¶ 1043, at 500; *see also id.* at ¶ 1036, at 497-98. The 51 recognized MTAs are based on the Rand McNally Commercial Atlas & Marketing Guide, *see* 47 C.F.R. § 24.13; 47 C.F.R. § 90.7, and are organized around the flow of commerce rather than state boundaries. Of the 51 licensed MTAs, 40 cross state borders; indeed, Congress noted in amending § 332 that CMRS services "by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructures." H.R. Rep. No. 111, 103rd Cong., 1st Sess., at 260 (1993).

The effect of § 51.701(b) is thus to bar LECs from assessing long-distance access charges to CMRS-LEC calls that cross state-created local exchange service areas, so long as the call stays within the same MTA. Allowance of access charges on such calls directly

³ *See* Petition of the Local Exchange Carrier Coalition for Reconsideration and Clarification at 17.

contravenes the Commission's earlier finding that "radio common carriers and cellular carriers are not [long distance, or "inter-exchange" carriers] and therefore are not required to pay LECs interstate access charges." *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 F.C.C. Rcd. 5020, 5074, at ¶ 115 (1996), *citing MTS and WATS Market Structure*, 97 F.C.C.2d 834, 881-83 (1984). The Commission's decision to adopt MTA-wide local calling areas for CMRS providers is entirely correct, consistent with Commission precedent, and should be maintained.

The MTA rule is vitally important to Sprint Spectrum and many other CMRS providers because it allows CMRS carriers to structure their rates to reflect the actual flow of commerce. Local CMRS calling areas do not coincide with wireline local exchange areas. If local calling areas are artificially defined on the basis of smaller areas, LECs will be empowered to impose proxy access charges on CMRS providers whenever calls cross local exchange service area lines, despite the fact that these calls do not actually use the LECs' transport facilities and therefore impose no additional cost. Beyond permitting LECs to reap windfall profits bearing no relation to CMRS usage of LEC facilities, moreover, a change in the rule would have the extraordinary effect of allowing LECs and state commissions to define local calling areas for federally-licensed providers of interstate services.

As the *First Report* makes clear, the MTA rule is a product of the FCC's "existing practice," not an innovation arising out of this proceeding. *Id.* ¶ 1043, at 500. Indeed, the Commission based § 51.701(b) explicitly on "our authority under section 251(g) to preserve the current interstate access charge regime." *Id.* "[T]he new transport and termination rules should be applied to LECs and CMRS providers," the Commission said, "so that CMRS

providers continue not to pay interstate access charges for traffic that currently is not subject to such charges." *Id.* This rule correctly resolves the issues presented to the Commission and should not be altered upon reconsideration.⁴

II. THE COMMISSION'S RULES REQUIRING RECIPROCAL COMPENSATION SHOULD NOT BE UNDERMINED BY PERMITTING LECs TO DRAW INAPPROPRIATE DISTINCTIONS BASED ON TECHNOLOGY.

Section 51.711(a) properly requires that "[r]ates for transport and termination of local telecommunications traffic shall be symmetrical."⁵ This result is important because, as the Commission noted, "LECs have used their unequal bargaining position to impose asymmetrical rates for CMRS providers. . . ." *First Report* at 525, ¶ 1087. The Commission's decision to adopt the LEC's transport and termination prices as a presumptive proxy for other telecommunications carriers' additional costs of transport and termination, *id.* at 524, ¶ 1085, eliminates this potential for abuse of bargaining power. This approach makes particular sense in light of the potential for substantially different network configurations even among systems that serve the same geographic area and have equivalent functionality to LEC networks. Accordingly, the Commission correctly held that "[w]here the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate." *Id.* at ¶ 1090; *see also* Section 51.711(a)(3).

⁴ We also agree with the Cellular Telecommunications Industry Association that the Commission should clarify that CMRS providers should not be obligated to pay interstate access charges.

⁵ Section 51.711(a) defines "symmetrical" as "rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of local telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services." Subsections (b) and (c) define limited exceptions to the symmetry requirement.

It is crucial to a faithful implementation of the Act and to the evolution of a competitive telecommunications marketplace that different network configurations between LECs and new entrants not lead to asymmetrical charges by LECs. This is particularly true in the case of CMRS providers. For example, a CMRS network includes "transport" facilities that link base stations and switches in the same manner that a LEC network employs interoffice trunks for the transport of traffic between tandem and end offices. Any element of termination and transport for which the LEC will charge a CMRS provider should be treated symmetrically, and the Commission's rules achieve this goal.

In this proceeding, however, some LECs claim that asymmetrical charges are justified because their network infrastructure is supposedly more capital intensive than the more efficient systems being built by new entrants.⁶ The LEC argument, reduced to its most basic elements, is that they may have several switches throughout a market and employ tandems to sort traffic among those switches. New entrants, on the other hand, typically utilize newer switching and transport technologies that do not require dozens of switches -- current high-capacity switches can easily serve large geographic areas with one or two switches. This argument does not deny that the LEC and new-entrant networks have the same functionality; rather, it claims that the historical artifact of the physical distinctions between the systems justifies denying symmetrical compensation. The LECs claim either that LECs should pay

⁶ This argument, of course, ignores the fact that CMRS networks employ numerous "transport" facilities to move traffic to and from base stations, and that CMRS carriers have expended substantial capital expenditures to acquire spectrum, relocate microwave incumbents and build large-scale, state-of-the-art systems. It also bears noting that the LECs' less efficient plants, virtually without exception, will have been paid for by ratepayers within the LECs' ratebase over years of returns guaranteed by state regulation.

new entrants a lower rate than new entrants pay LECs,⁷ or that new competitors should pay "transport" for the LECs' internal tandem structure by paying a premium above actual symmetrical rates. In either case, the net result is that symmetrical payment principles would be abandoned and new entrants penalized for constructing a more efficient architecture.

This argument must be rejected. The Commission's approach of using LEC costs as a presumptive proxy levels the playing field and will foster equitable and cost-based interconnection agreements. Permitting LECs to obtain asymmetrical compensation because the LECs have an outmoded network architecture would be perverse indeed. Rather than providing incentives for LECs to update technology to lower their costs and better serve their customers, this approach would penalize innovation and reward maintenance of outdated switching and transport architectures. As Cox Communications, Inc. persuasively asserted in its limited petition for reconsideration,⁸ the Commission should clarify that LECs cannot provide asymmetrical transport and termination rates based on the technological nature of the LEC network.

⁷ See Petition of the Local Exchange Carrier Coalition for Reconsideration and Clarification at 14-15.

⁸ Petition of Cox Communications, Inc. at 5-7.

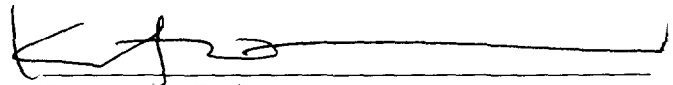
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For these reasons, the Commission should maintain MTA-size local calling areas for CMRS carriers and clarify that LECs must provide true reciprocal compensation to new entrants.

Respectfully submitted,

SPRINT SPECTRUM L.P.

JONATHAN M. CHAMBERS
VICE PRESIDENT OF PUBLIC AFFAIRS
SPRINT SPECTRUM L.P.
1801 K Street, N.W., Suite M-112
Washington, D.C. 20036
(202) 835-3617



JONATHAN D. BLAKE
KURT A. WIMMER
GERARD J. WALDRON
ERNEST A. YOUNG

COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044

Its Attorneys

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